

REMARKS

I. PRELIMINARY REMARKS

The claim amendments and following remarks were previously submitted in the response filed on May 22, 2009, and are included herewith solely for the Examiner's convenience.

Claims 51-87 are pending, and claims 54-70 have been withdrawn. Claims 51, 52, 54, 71-73, 75-77, 79-81, and 83 have been amended to remove the use of the term "extract." Claim 81 has also been amended to correct a misspelled term. Claims 51, 54, 71, 72, 75, 76, 79, 80, and 83 have also been amended to remove the Latinate names of the berries. Claims 84-87 are newly added.

Support for the amendments to the claims to recite constituents of berries can be found throughout the specification, and, for example, at paragraphs [0050], [0069], and [0095]. Support for the newly added claims can be found throughout the specification, and, for example, at paragraphs [0002], [0069], [0081], and [0097]. No new matter has been added.

The present invention is directed to the discovery of a composition including constituents from berries that inhibits angiogenesis and *H. pylori* and demonstrates an improved antioxidant capacity.

II. THE OUTSTANDING REJECTIONS

Claims 51-53 and 71-83 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Claims 51-53 and 71-83 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

Claims 51-53, 72-74, 76-78 and 80-82 stand rejected under 35 U.S.C. §102 (b) as being anticipated by Powrie et al. U.S. Patent Publication No. 2001/0053404 ("Powrie"), as evidenced by Shanbrom U.S. Patent Publication No. 2002/0117403 ("Shanbrom"), Ou et al. U.S. Patent No. 7,132,296 ("Ou"), Wang et al. J. Agric. Food Chem., 48:140-146 (2000) ("Wang I"), and Mann U.S. Patent Publication No. 2001/0012525 ("Mann").

Claims 51-53 and 72-74 stand rejected under 35 U.S.C. §103 (a) as being obvious over Joseph et al. J. Neuroscience, 19(18):8114-8121 (2000) (“Joseph”) in view of Wang et al. J. Agric. Food Chem., 44:701-705 (1996) (“Wang II”) and Prior et al. J. Agric. Food Chem. 46:2686-2693 (1998) (“Prior”).

Claims 51-53, 72-74, 76-78, and 80-82 stand rejected under 35 (a) as being obvious over Joseph in view of Wang II, Prior, and Moyer et al. J. Agric. Food Chem., 46:2686-2693 (1998) (“Moyer”).

III. PATENTABILITY ARGUMENTS

A. The Rejection under 35 U.S.C. §112, First Paragraph, Should be Withdrawn.

The rejections for failing to comply with written description requirements under 35 U.S.C. §112, first paragraph, should be withdrawn because the claims have been amended to remove the Latinate names. The Latinate names were added in response to the indefiniteness rejection of the previous Office Action dated June 4, 2007, for the term “wild” bilberry or blueberry. Wild bilberry or wild blueberry is definite and refers to berries that have been grown in the wild. *See* the application at [0050]. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

B. The Rejection under 35 U.S.C. §112, Second Paragraph, Should be Withdrawn.

The rejections for being indefinite under 35 U.S.C. §112, second paragraph, should be withdrawn for the following reasons.

The rejections of claims 51, 71, 72, 76, 79, 80, and 83 should be withdrawn because the claims have been amended to remove the term “extract.” Instead, the claims are directed to constituents of four or more berries. These constituents, include, among others, polyphenols, flavonoids, and anthocyanins, as described in the specification. Thus, the indefiniteness rejection under 35 U.S.C. §112, second paragraph, should be withdrawn.

With respect to claims 71, 75, 79, and 83, the rejection should be withdrawn because the claims have been amended to recited “based on total weight of the composition.” Thus, the indefiniteness rejection under 35 U.S.C. §112, second paragraph, should be withdrawn.

Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

- C. The Art-based Rejections under 35 U.S.C. §102(b) over Powrie Should be Withdrawn.

The rejections of claims 51-53, 72-74, 76-78, and 80-82 over Powrie, as evidenced by Shanbrom, Ou, Wang I, and Mann should be withdrawn because Powrie fails to teach a composition comprising constituents of four or more berries, as recited in amended claims 51 and 76. Instead, Powrie discloses a juice including berries. Further, Powrie fails to disclose a composition having a higher antioxidant capacity than that of any one berry used in the composition, as recited in the pending claims.

- D. The Art-based Rejections under 35 U.S.C. §103(a) Should be Withdrawn.

The rejections of claims 51-53, 72-74, 76-78, and 80-82 over Joseph in view of Wang II, Prior, and Moyer should be withdrawn because the cited references do not disclose or suggest a composition comprising constituents of four or more berries. Furthermore, the cited references fail to disclose or suggest that a composition of four or more berries has a higher antioxidant capacity than that of any one berry used in the composition.

Joseph discloses various tests performed on rats supplemented with spinach, blueberry, or strawberry extracts. However, Joseph fails to disclose or suggest combining the spinach, strawberry, or blueberry extracts. Each extract was tested individually, and therefore, there is no disclosure or suggestion that the combination of the extracts would result in a composition having a higher antioxidant capacity than that of any one of the extracts used in the composition. Furthermore, Joseph fails to suggest berries other than blueberry or strawberry, and therefore, fails to suggest combining other berries to form the claimed composition. In contrast, the claimed composition includes constituents from four or more berries and demonstrates a higher antioxidant capacity than that of any one berry used in the composition.

The other cited references similarly fail to disclose or suggest a composition including constituents from four or more berries. Each of the cited references discloses testing of berries individually. Therefore, none of the cited references disclose or suggest a


composition having a higher antioxidant capacity than that of any one berry used in the composition, as recited by the pending claims.

CONCLUSION

In view of the above amendment and remarks, applicants believe the pending application is in condition for allowance. Should the Examiner wish to discuss any issues of form or substance in order to expedite allowance of the pending application, she is invited to contact the undersigned at the number indicated below.

Dated: September 21, 2009

Respectfully submitted,

By 
Jeffrey S. Sharp

Registration No.: 31,879
MARSHALL, GERSTEIN & BORUN LLP
233 S. Wacker Drive, Suite 6300
Sears Tower
Chicago, Illinois 60606-6357
(312) 474-6300
Attorney for Applicant